

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: SB 1844

INTRODUCER: Senator Haridopolos

SUBJECT: Nonjudicial Arrest Record Expunction

DATE: March 23, 2006

REVISED: 03/29/06

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dugger	Cannon	CJ	Fav/1 amendment
2.		JU	
3.			
4.			
5.			
6.			

## Please see last section for Summary of Amendments

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Technical amendments were recommended

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Amendments were recommended

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Significant amendments were recommended

### I. Summary:

Senate Bill 1844 requires the local law enforcement agency that wrongly arrests a juvenile or adult to apply to the Florida Department of Law Enforcement (FDLE) for an administrative expunction of that non-judicial arrest record, if the agency or court determines the arrest is a mistake or that it is unlawful.

It also allows an adult or the parent or legal guardian of a minor child to apply to the FDLE for an administrative expunction under these same circumstances, if the application is accompanied by an endorsement from the head of the arresting agency or the state attorney in the judicial circuit in which the arrest occurred.

Finally, the bill provides that an application or endorsement is not admissible as evidence in any judicial or administrative proceeding, nor is either one to be construed as an admission of liability in connection with the arrest.

This bill substantially amends section 943.0581 of the Florida Statutes.

## **II. Present Situation:**

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The definition of “criminal history record” in s. 943.045, F.S., includes notations of arrests, detentions, indictments, informations, or other formal criminal charges and dispositions. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records.

The FDLE is authorized to administratively expunge non-judicial records of arrest (adult and juvenile) that are made contrary to law or by mistake under s. 943.0581, F.S. Currently, a person wanting his or her arrest record administratively expunged may not apply directly to the FDLE. Instead, a person wrongly arrested must have the local arresting law enforcement agency send written documentation to the FDLE requesting that the department administratively expunge the arrest record.

Specifically, Rule 11C-7.008 of the Florida Administrative Code requires the chief law enforcement officer of the arresting agency to provide the administrative expunction request in writing, on agency letterhead, and it must be signed by the officer or his authorized designee. The process can be expensive (many times an attorney must be hired) and the burden is on the person who is wrongly arrested to get his or her record administratively expunged. According to the FDLE, there were 144 administrative expungements in the last 12 months.

## **III. Effect of Proposed Changes:**

Senate Bill 1844 would require the local law enforcement agency that wrongly arrests a juvenile or adult to apply to the FDLE for an administrative expunction of the non-judicial arrest record, if the agency or court determines the arrest is a mistake or that it is unlawful.

The bill would also allow an adult or the parent or legal guardian of a minor child to apply to the FDLE for an administrative expunction under these same circumstances, if the application is accompanied by an endorsement from the head of the arresting agency or the state attorney in the judicial circuit in which the arrest occurred. The application would also be required to include an affidavit executed by the chief or department head of the law enforcement agency verifying that he or she reviewed the arrest and it was a mistake or unlawful.

In either case, the bill would provide that an application or endorsement is not admissible as evidence in any judicial or administrative proceeding, nor is either one to be construed as an admission of liability in connection with the arrest.

These changes will make it easier and less expensive for a person wrongly arrested to have his or her arrest record administratively expunged by the FDLE by requiring the local arresting law enforcement agency to apply for the expunction (instead of the person wrongly arrested). Of course, the bill also makes it possible for the person to apply directly to the FDLE for an administrative expunction.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill should make it less expensive for persons wrongly arrested to have their arrest record administratively expunged by the FDLE because the local arresting law enforcement agency will now have the responsibility to initiate and follow-through on this process.

**C. Government Sector Impact:**

According to the FDLE, the bill should not have a fiscal impact upon the department.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

### **Barcode 832068 by Criminal Justice:**

Clarifies that the affidavit must include the date and time of the arrest, the arresting officer's name, the arrested person's name, and the crime charged.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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